

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

V.

J.T. POSEY COMPANY,

Defendant.

AND RELATED COUNTERCLAIM.

) Civil Action No. 05-10917 PBS

) ORAL HEARING REQUESTED

**MOTION OF DEFENDANT J.T. POSEY COMPANY FOR ORDER
COMPELLING DEPOSITION AND FOR SANCTIONS AGAINST
HIPSAYER AND ITS COUNSEL**

Defendant J.T. Posey Company (“Posey”) moves this Court an order compelling the deposition of plaintiff and counterclaim defendant The HipSaver Company, Inc. (“HipSaver”) and for monetary sanctions against HipSaver and its counsel in the amount of \$%,410. The motion to compel is brought pursuant to Rule 37(d) of the Federal Rules of Civil Procedure (“Rule 37(d)”) and is made upon the grounds that, although HipSaver was served with a proper notice of deposition, HipSaver refused to have an officer, director or managing agent of HipSaver or any other person designated under Rule 30(b)(6) appear for deposition on the noticed date.

The motion for sanctions is also brought pursuant to Rule 37(d) and is made upon the grounds that (i) HipSaver's failure to attend its deposition caused Posey to incur expenses and attorneys' fees, (ii) that the failure to attend the deposition was not

substantially justified, and (iii) that no other circumstances exist that would make an award of expenses unjust.

The instant motion is based upon this Notice, the accompanying memorandum in support of this motion, the accompanying declarations, and all pleadings, exhibits and records on file herein and upon such additional argument and evidence as may be presented to the Court at the time of any hearing.

The undersigned counsel for Posey hereby certifies that he has conferred with HipSaver's counsel and attempted in good faith to resolve or narrow the issues raised by this motion.

Dated: September 26, 2005

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg
Jeffrey G. Sheldon (CA Bar No. 67516)
Douglas H. Morseburg (CA Bar No. 26205)
Shannon S. Sheldon (CA Bar No. 216199)
SHELDON & MAK
225 South Lake Avenue, Suite 900
Pasadena, CA 91001
(626) 796-4000

Anthony J. Fitzpatrick (BBO # 564324)
DUANE MORRIS LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
(617) 289-9200

CERTIFICATE OF SERVICE

I certify that a copy of this document has been forwarded by electronic mail and USPS First Class mail today to Plaintiff's counsel of record, Edward J. Dailey, Esq., BROMBERG SUNSTEIN LLP, 125 Summer Street, 11th Floor, Boston, Massachusetts 02110-1618, Edailey@bromsun.com.

/s/ Donald K. Piper
Donald K. Piper